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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/582,623      | 07/21/2000  | Rene Chiocca         | 193618US3XPC        | 2666             |

116 7590 07/14/2004

PEARNE & GORDON LLP  
1801 EAST 9TH STREET  
SUITE 1200  
CLEVELAND, OH 44114-3108

EXAMINER

BEHREND, HARVEY E

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3641

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 3641

1. The amendment filed on 2/20/04 is non-responsive because it has amended the claims originally acted on so that they are no longer directed to the invention/species originally acted on.

The originally claimed and acted on invention/species was to a "transport device" per se.

The claims, as now amended in the 2/20/04 response and, the newly presented claims, are instead directed to a "container" per se.

These two inventions/species are on their face, separate and distinct, each from the other.

Even applicant has argued that such are patentably distinct as indicated for example by the "Remarks" section on page 5 of the 9/4/03 amendment wherein (in response to an art rejection over any of which clearly showed a "container"), applicant in the third and fifth full paragraph on said page 5 specifically states:

"that the term "transport device" in the claims does not recite an intended use but rather sets forth the subject of the claimed device. In this case, the subject is a nuclear fuel transport device, i.e., a device conceived and adapted to transport nuclear fuel, and nothing else. This recitation conveys to one skilled in the art the basic structure necessary to a nuclear fuel transport device, which is then further defined in the claims. For this reason also, one skilled in the art would not interpret the "nuclear fuel transport device" of the claims to include the generator or reactor of Taylor, Cornic, or Butler. ...

For these reasons, applicant emphasizes that the term "nuclear fuel transport device" imports necessary structure, and is not merely a statement of intended use.

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Furthermore, the term "transport device" does not include reactors or generators. For these reasons, claims 17-28 and 30-31 define over the cited art." (Underlining in the original).

Note that the examiner in the 10/20/03 Office action had examined only claims that were specific to a "transport device" and had set forth rejections that were specific to a "transport device".

If applicant desires to have the invention/species set forth in the newly amended claims and the newly presented claims, considered on the merits, such can be accomplished by the appropriate filing of a divisional application.

It is noted that the Interview Summary of the interview on 1/28/04 indicates that no agreement was reached.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harvey Behrend whose telephone number is (703) 305-1831. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone

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number for the organization where this application or proceeding is assigned is (703) 306-4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1113.

Behrend/vs  
May 17, 2004

A handwritten signature in black ink, appearing to read 'H. Behrend', with a large, sweeping loop at the end.

**HARVEY E. BEHREND  
PRIMARY EXAMINER**